**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

**WRIT PETITION No.21631 of 1996**

**Dated: 22.01.2007**

Between
Ch.Sundar Rao, S/o.Rajaiah

...Petitioner

And

1. The Union of India,
   Rep. By its General Manager,
   S.C. Railways, Secunderabad and two others.

...Respondents

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

**WRIT PETITION No.21631 of 1996**

**ORDER:**

Questioning the proceedings dated 21.08.1996, whereby the petitioner was informed that an Enquiry Officer had been appointed to enquire into the charges leveled against him in charge memo dated 08.01.1982, the present writ petition is filed.

The sole ground, on the basis of which the petitioner claims that these proceedings should be quashed, is of inordinate and unexplained delay on the part of the respondents in proceeding with the disciplinary action instituted against him earlier.

Facts, in brief, are that the petitioner was issued charge memo dated 08.01.1982 for having assaulting his superior officer in a drunken state. The said enquiry culminated in imposition of punishment of dismissal from service by order dated 12.01.1983. Aggrieved thereby, the petitioner filed O.S.No.64 of 1985 before the District Munsiff, Gooty, which was transferred and renumbered as O.S.No.303 of 1987 in the Court of District Munsif, Guntakal. The said suit was decreed by judgment dated 23.08.1991 and the order of the Enquiry Officer, in proceedings dated 12.01.1983 as confirmed by order dated 21.03.1983, was held to be illegal and void and the first respondent was directed to hold a fresh

enquiry after giving sufficient opportunity to the plaintiff/petitioner and to intimate the date of enquiry to him.

The judgment in O.S.No.303 of 1987, dated 23.08.1991, attained finality as no appeal was preferred against the said judgment by either party. On 03.02.1996 i.e., nearly five and half years thereafter, the petitioner submitted a representation seeking reinstatement into duty. Pursuant thereto the respondents, *vide* proceedings dated 22.03.1996, asked him to furnish a certified copy of the judgment. On 12.08.1996 the petitioner was reinstated into duty and was placed under suspension in accordance with Rule 138 of the RPF Rules, 1987. Thereafter, proceedings dated 21.08.1996 were issued informing the petitioner about the appointment of an Enquiry Officer. The fact that no action was taken, after the judgment in O.S.No.303 of 1987 dated 23.08.1991, till the petitioner was placed under suspension on 12.08.1996 i.e., for a period of nearly five years, is not in dispute.

Sri V.Mallik, learned counsel for the petitioner, while placing reliance on ***State of A.P. v. N.Radhakishan*** [1], ***P.V.Mahadevan v. MD, T.N. Housing Board*** [2] ***and Subrata Chaki v. State of West Bengal*** [3] would contend that in the light of the inordinate and unexplained delay of nearly five years in conducting departmental enquiry, in accordance with the judgment and decree in O.S.No.303 of 1987 dated

23.08.1991, the proceedings instituted thereafter are liable to be quashed.

Sri.R.S.Murthy, learned Standing Counsel appearing on behalf of the Railways, would contend that it was for the first time, after the petitioner submitted his representation dated 03.02.1996, that the respondents came to be aware of the fact that O.S.No.303 of 1987 was decreed on 23.08.1991. Learned Standing Counsel would submit that, on receipt of the petitioner's representation, the respondents had addressed a letter to their counsel and that their counsel, in reply thereto *vide* letter dated 29.02.1996, had forwarded the certified copy of the decree and judgment dated 23.08.1991. Learned Standing Counsel would rely on ***R.C.Sharma v. Union of India***[4] and submit that the proceedings before the Civil Court, and the judgment and decree passed by it, are required to be ignored in as much as the petitioner could not have approached the Civil Court questioning the disciplinary proceedings initiated against him. Learned Standing Counsel would further submit that in view of the fact that the Rules provided for a revision being preferred, against the order of the disciplinary authority initiating disciplinary action against the petitioner, the existence of an alternative remedy would bar the jurisdiction of this Court under Article 226 of the Constitution of India from entertaining the writ petition and that the writ petition is liable to be dismissed as not maintainable.

One other fact, which is required to be taken note

of, is that during the pendency of the writ petition, the petitioner retired from service w.e.f. 31.07.2003.

Before dealing with the contentions raised by Sri V. Mallik, learned counsel for the petitioner, it is necessary to deal with the objections raised by Sri R.S.Murthy.

It is well settled that mere existence of an alternative remedy does not bar the jurisdiction of this Court under Article 226 of the Constitution of India to entertain a Writ Petition. This Court, where an alternative remedy exists, would normally exercise its discretion and refrain from exercising its jurisdiction. That does not, however, mean that the jurisdiction of this Court under Article 226 of the Constitution of India is barred on the ground that an alternative remedy exists. Mere existence of an alternative remedy is not a bar for this Court to exercise jurisdiction under Article 226 of the Constitution of India. This Court would, normally, refuse to entertain a writ petition, on the ground of existence of an alternative remedy, at the stage of admission. Having admitted the writ petition, which has been pending on the file of this Court for more than a decade, I see no reason now to dismiss this writ petition on the ground of existence of an alternative remedy.

Sri R.S.Murthy, learned Standing Counsel, would also contend that the petitioner had earlier filed W.P.No.15770 of 1996 on 07.08.1996, wherein he had questioned the disciplinary proceedings initiated against him in 1982, as illegal and arbitrary and for a

direction that he be reinstated as a Rakshak with all consequential benefits. It is not in dispute that W.P.No.15770 of 1996 was filed on 07.08.1996. The order dated 21.08.1996, which is impugned in this writ petition and the earlier order dated 12.08.1996 whereby the petitioner was reinstated and placed under suspension, are subsequent to the filing of W.P.No.15770 of 1996. The impugned proceedings dated 21.08.1996, could not have been questioned on 07.08.1996 when W.P.No.15770 of 1996 came to be filed.

Learned Standing Counsel would further submit that the earlier writ petition was filed on the ground of inordinate delay in initiating disciplinary action pursuant to the charge memo dated 08.01.1982. According to the learned Standing Counsel the subsequent proceedings dated 21.08.1996, which relates to the appointment of an Enquiry Officer is of no consequence. He would contend that, since the relief sought for in the subsequent writ petition is identical to the relief sought for in the earlier writ petition, the subsequent writ petition is not maintainable. The cause of action in the present writ petition arose consequent upon the proceedings dated 21.08.1996 appointing an Enquiry Officer which event took place subsequent to the earlier Writ Petition and which proceedings could not and has not been challenged in the earlier Writ Petition. I see no reason, therefore, to dismiss this writ petition on the ground that the earlier writ petition, challenging the continuation of disciplinary proceedings

pursuant to the charge memo issued in the year 1982, is pending on the file of this Court.

Reliance placed by the learned Standing Counsel on ***R.C.Sharma v. Union of India*** (4 supra) to contend that the petitioner could not have filed a civil suit against the disciplinary action initiated against him, is misplaced. It cannot be lost sight of that the judgment, in O.S.No.303 of 1987 dated 23.08.1991, has attained finality. It is well settled that a person, who is a party to a judgment is not entitled to question the correctness or otherwise of the said judgment except in appeal/revision/review there against. As the judgment, in O.S.No.303 of 1987 dated 23.08.1991, has attained finality, it is not open to the petitioner to canvass the correctness or otherwise of the said judgment in subsequent proceedings. This objection must, therefore, also be rejected.

Now the question as to whether there has been any delay on the part of the respondents in continuing the disciplinary proceedings instituted earlier against the petitioner, consequent upon the judgment and decree in O.S.No.303 of 1987 dated 23.08.1991 and whether their action in appointing an Enquiry Officer, by order dated 21.08.1996, is liable to be quashed on the ground of inordinate delay and latches.

As noted above the fact that, pursuant to the judgment and decree of the District Munsif, Guntakal in O.S.No.303 of 1987 dated 23.08.1991 whereby the respondents were directed to hold a fresh enquiry after giving sufficient opportunity and intimating the date of

enquiry to the petitioner, no action was taken till 12.08.1996, when the petitioner was reinstated into service and placed under suspension, is not in dispute. Petitioner would contend that this delay of nearly five years, on the part of the respondents, is inordinate and on this ground, continuing the disciplinary proceedings by appointment of an Enquiry Officer on 21.08.1996 is liable to be quashed. Sri R.S.Murthy, learned Standing Counsel, would invite attention of this Court to the letter addressed by Sri G.Venkata Reddy, Advocate to the Divisional Security Commissioner, Railway Protection Force, Guntakal, dated 29.02.1996, forwarding a copy of the judgment and decree dated 23.08.1991. It is necessary to note that, in the very same letter dated 29.02.1996, Sri G.Venkata Reddy, Advocate informed the Divisional Security Commissioner that the result of the suit was intimated on 26.08.1991 after judgment, and since nobody has turned up he had kept the certified copies of the judgment and decree with him.

In the counter affidavit filed before this Court, the specific averment of Sri G.Venkata Reddy in his letter dated 29.02.1996, that the result of the suit was intimated on 26.08.1991 has not been disputed. While Sri R.S.Murthy, learned Standing Counsel, would seek to make oral submissions in this regard, in the absence of any averment in the counter-affidavit I am not inclined to entertain any oral submissions made across the bar referring to facts, which have not been pleaded.

Suffice it to note that since the fact, of Sri

G.Venkata Reddy, Advocate having intimated the result of the suit on 26.08.1991, has not been disputed, in the counter affidavit filed by the respondents in the present writ petition, it must be presumed that the result of the suit was intimated to the respondents on 26.08.1991. There is no whisper in the counter affidavit as to why the respondents kept quiet for nearly five years, after intimation on 26.08.1991, to appoint an Enquiry Officer on 21.08.1996. There is no explanation, much less valid explanation, for the inordinate delay in continuing with the disciplinary proceedings by appointing an Enquiry Officer in accordance with the judgment and decree of the Civil Court in O.S.No.303 of 1987 dated 23.08.1991.

In **State of A.P. v. N.Radhakishan** (1 supra) the Supreme Court observed thus:

> "…….It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no

explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations……..”

In **P.V.Mahadevan v. MD T.N.Housing Board** (2 supra), the Supreme Court observed:

> "……..It is now stated that the appellant has retired from service. There is also no acceptable explanation on the side of the respondent explaining the inordinate delay in instituting departmental disciplinary proceedings…… ……..The stand now taken by the respondent in this Court in the counter-affidavit is not convincing and is only an afterthought to give some explanation for the delay.
>
> Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the

> appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer……."

In ***Subrata Chaki v. State of West Bengal*** (3 supra) the Calcutta High Court observed as follows:

> "……It would depend upon the facts and circumstances of each particular case whether because of inordinate delay either to initiate or to conclude the disciplinary proceedings, the same ought to be quashed and such proceedings have been delayed because of the conduct of the delinquent himself, he cannot certainly plead that he had been denied reasonable opportunity because of lapse of time. Again delay would not be fatal in case the disciplinary authorities remain restrained by order of the court or are prevented by any other sufficient cause from concluding the proceedings. In the instant case, atleast from the date of the disposal of the writ application by the learned Single Judge, there was no injunction upon the respondents from proceeding with the enquiries against the appellants. On the other hand, the learned trial judge had directed that the same be disposed of preferably within three months. The Division Bench in passing interim order in respect of suspension of the appellants had

> made adverse observation because the respondent had not taken any steps in regard to the disciplinary proceedings. No explanation for the delay of more than five and half years has been furnished either by the Commissioner, Presidency Division, who was to act as the Disciplinary Authority, or by Mr.B.K.Biswas, who was appointed as the Enquiring Officer.
> .....The appellants are likely to be seriously prejudiced if disciplinary proceedings against them is now started. We are not prepared to allow the respondents further time to hold enquiry when they themselves have not explained why they did not hold the disciplinary proceedings for such a long time."

While examining the plea of unexplained and inordinate delay in continuing with the enquiry, it also necessary to note that the petitioner has since retired from service on 31.07.2003. The very fact that the proceedings were pending against him for more than two decades, as held by the Supreme Court in ***P.V.Mahadevan v. MD T.N.Housing Board*** [2], and as the mental agony caused to the employee in this regard as a result of the disciplinary proceedings being kept pending, would itself indicate that the employee has suffered enough on account of the said proceedings, I do not see any reason to permit continuance of the disciplinary proceedings, more so, after the retirement of the petitioner from service w.e.f.31.07.2003, for a

charge which relates to an incident which took place in 1981, when the respondents have chosen to keep silent for five years after the judgment and decree in O.S.No.303 of 1987 dated 23.08.1991. The impugned order dated 21.08.1996, and the consequential disciplinary proceedings continued against the petitioner thereafter are quashed.

The writ petition is accordingly allowed. However, in the circumstances, without costs.

**Ramesh Ranganathan, J**

Date: 22.01.2007
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[1] (1998)4 Supreme Court Cases 154
[2] (2005) 6 Supreme Court Cases 636
[3] 1985(3)SLR 530
[4] AIR 1976 SC 2037